



REPUBLIC OF KENYA



**In re Estate of Geoffrey Mugwe Kamau (Deceased) (Succession Cause
113 of 2015) [2024] KEHC 3625 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3625 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 113 OF 2015
RN NYAKUNDI, J
APRIL 11, 2024
IN THE MATTER OF THE ESTATE OF GEOFFREY MUGWE KAMAU**

RULING

1. The applicant approached this court *vide* a Summons dated 4th September 2023 seeking the following orders;
 1. Spent
 2. That the 1st objector/plaintiff be granted leave to appeal to the Court of Appeal against the decision dated the 10th August, 2023.
 3. That there be an extension of time within which to give notice of appeal and serve and the notice of appeal lodged on the 25th August, 2023 be validated.
 4. That there be a stay of proceedings and/or injunction restraining dealings and distribution of the estate of the late Geoffrey Mugwe Kamau - deceased in this matter pending the hearing and determination of the intended appeal.
 5. That the costs of this summons be provided for.
2. The application is premised on the grounds set out therein and the contents of the affidavit in support of the application.

Applicant's Case

3. The applicant's case is that this court delivered judgement in this matter on 10th August 2023 and the applicant was informed of the decision by his advocate on 11th August 2023. As he is unemployed and have no steady source of income thus upon learning of the decision he started to prepare himself financially. He was able to give the instructions to appeal and a notice of appeal together with request for proceedings made on the 25th August, 2023. He prays that the time for appealing be extended as the delay was for only 1 day. He seeks to be granted leave to appeal to the Court of Appeal as he has grounds of appeal which are not frivolous.



4. The applicant also sought to have the proceedings in this matter halted pending the hearing and determination of the intended appeal as upon distribution of the estate, the property will be given to the beneficiaries leaving the applicant out and in the event the appeal succeeds the victory will be pyrrhic as he will not be able to get the property from the many beneficiaries who are in far flung places.

Respondent's Case

5. The respondent opposed the application *vide* a replying affidavit dated 13th October 2023. The 2nd objector deposed that this court has no jurisdiction to entertain an application for extension of time to lodge a Notice of Appeal out of time, and that jurisdiction is only in the Court of Appeal. Further, that the 1st Objector/Applicant has not demonstrated to this court that the appeal in the court of Appeal has high chances of success. Further, the claim that the 1st Objector has in respect to the estate is that she was the wife to the deceased and yet
 - (a) She does not have any marriage certificate.
 - (b) If it was a traditional marriage, which was not, she has not produced evidence of such a marriage as provided for under Kikuyu Customary Law.
 - (c) That surely she must demonstrate Kikuyu Customary law has been met.
 - (d) The 1st Objector does not have any child with the late Geoffrey Mugwe Kamau.
6. He deposed that a letter from chief has never been an ingredient for a marriage, be it statutorily or under the Kikuyu customary marriage. He maintained that this application is in bad faith, only meant to frustrate the bonafide beneficiaries of the Estate of The Late Geoffrey Mugwe Kamau, not to mention actuated by greed. From the foregoing, it will be moot and just that the summons herein be dismissed with costs.

Analysis & Determination

7. Upon considering the application and attendant responses, the following issues arise for determination;
 1. Whether this court has jurisdiction to grant leave to file an appeal out of time
 2. Whether the application for extension of time is merited
 3. Whether the orders for stay of proceedings is merited
8. Whether this court has jurisdiction to grant leave to file an appeal out of time
9. The Law of Succession does not prescribe a timeline for the filing of an appeal arising from the decision of the High Court. Further, the respondent, despite stating that this court lacks jurisdiction to grant leave to file an appeal out of time, has not demonstrated that there is a statutory provision that lends credence to this submission. I draw the attention of the parties to Section 58 of the [Interpretation and General Provisions Act](#) which provides:-

“Where no time is prescribed or allowed within which anything shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises”
10. The powers of the court in deciding an application to seek leave to file an appeal out of time are discretionary and unfettered. The parameters for the exercise of a court's discretion have been concisely



laid out in the case of *Mwangi vs Kenya Airways Ltd* [2003] eKLR where the Court of Appeal expressed itself thus:-

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether or not to grant an extension of time are; first, the length of the delay; secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

Whether the Application has been filed without unreasonable delay

11. The impugned decision was delivered on 10th August 2023. The present application was filed on 18th September 2023. The Applicant attributed the delay to his financial inability to enable the retainer of an advocate to lodge an appeal. The court is alive to the right of access to justice that is enshrined in the constitution. In the circumstances, it is my considered view that the delay was not inordinate as the Notice of Appeal was lodged on 24th August, two weeks after the impugned decision.

Whether the appellant has an arguable appeal

12. As this court is not the appellate court, I would prefer not to delve into the merits of the appeal as it arises from a decision of this court. As the appeal challenges whether or not the appellant was a wife to the deceased, it is my view that it is an arguable point of law that is pertinent to the distribution of the estate.

Whether the respondents will be prejudiced if leave is granted

12. This is a matter concerning distribution of an estate and the rightful beneficiaries. If the appeal succeeds, and the administrators distribute the estate before then, the same will be rendered an academic exercise as the subject matter will have been divided among the beneficiaries with the possibility of being disposed of.
13. The upshot of the foregoing is that the application is allowed in the following terms;
 1. The applicant is granted leave to file the appeal out of time.
 2. The Notice of Appeal lodged on 25th August 2023 is deemed as duly filed.
 3. There is a stay of proceedings and dealings in the estate of the late Geoffrey Mugwe Kamau pending the hearing and the determination of appeal.

It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 11TH DAY OF APRIL 2024

R. NYAKUNDI

JUDGE

